

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAN SAFRA,

Plaintiff,

vs.

HOLLAND AMERICA LINE, INC., a
Washington Corporation, HOLLAND
AMERICA LINE N.V., a Curacao
Corporation, and HAL ANTILLEN N.V. a
Curacao Corporation.

Defendants.

IN ADMIRALTY

CASE NO.: 2:17-cv-01330-JCC

**DEFENDANTS' ANSWER TO AMENDED
COMPLAINT**

COMES NOW Defendants Holland America Line, Inc., Holland America Line N.V and
HAL Antillen, N.V. (hereinafter "Defendants") hereby responds to Plaintiff's Amended
Complaint and admits, denies, and alleges as follows:

JURISDICTION

1. Answering Paragraph 1 of Plaintiff's Amended complaint, page 1, lines 21-
26¹ Defendants admit that Plaintiff purports to assert the claims described in paragraph 1.
Defendants admit that Plaintiff has asserted diversity jurisdiction and that upon information and
belief Plaintiff and Defendants are citizens of different states or countries. Except as admitted,

¹ In answering Plaintiff's Amended Complaint, ECF Docket No. 4, Defendants reference the ECF
numbering at the top of each page. Because Plaintiff's paragraphs are not numbered, Defendant refers to
the Paragraphs as paragraph 1, paragraph 2 and so forth as they appear consecutively under each
corresponding header on each individual page of the First Amended Complaint.

1 Defendants are without sufficient knowledge and/or information to admit or deny said Paragraph,
2 and therefore, denies each and every allegation contained therein.

3 **VENUE**

4 2. Answering the Paragraph of Plaintiff's Amended complaint under "Venue", on
5 page 2, lines 2-4, Defendants admit venue is proper before this court. Except as specifically
6 admitted denied as phrased.

7 **PARTIES**

8 3. Answering Paragraph 1 of Plaintiff's amended complaint on page 2, lines 7-8 under
9 "Parties", Defendants lack information or belief to admit or deny the allegations contained therein,
10 and therefore deny same.

11 4. Answering Paragraph 2 of Plaintiff's amended complaint on page 2, lines 9-13
12 under "Parties", Defendant admits that Holland America Line Inc. is a Washington corporation
13 with its principal place of business in Seattle Washington and that Holland American Line, Inc.,
14 was the operator of the vessel. Except as expressly admitted, Defendants specifically deny
15 Plaintiff has correctly asserted the accurate roles of each and every Defendant as regards to this
16 claim.

17 5. Answering Paragraph 3 of Plaintiff's amended complaint on page 2, lines 14-16
18 under "Parties", Defendants admit.

19 6. Answering Paragraph 4 of Plaintiff's amended complaint on page 2, lines 17-18
20 under "Parties", Defendants admit.

21 **FACTUAL BACKGROUND**

22 7. Answering Paragraph 1 of Plaintiff's Amended complaint on page 2, lines 21-24
23 under "Factual Background", defendants admit that Plaintiff purchased a 7-day cruise to Alaska
24 aboard the MS ZAADAM and that the cruise would depart from port in Seward, Alaska on
25 September 4, 2016 and visit Glacier Bay, Juneau, and Ketchikan before arriving in Vancouver,
26 British Columbia on September 11, 2016. Except as expressly admitted, Defendants lack

1 information or belief to admit or deny the allegations contained therein, and therefore deny same.

2 8. Answering Paragraphs 2-6, lines 1-25 on page 3, of Plaintiff's Amended complaint
3 under "Factual Background Defendants lack information or belief to admit or deny the allegations
4 contained therein, and therefore Defendants deny the allegations contained therein.

5 9. Answering Paragraphs 7-11, lines 1-22 on page 4, of plaintiff's Amended
6 complaint under "Factual Background", Defendants deny each and every allegation contained
7 therein.

8 10. Answering Paragraph 12(a)-(b), lines 23-26 on page 4, and line 1 on page 5, of
9 Plaintiff's Amended complaint under "Factual Background", Defendants deny each and every
10 allegation contained therein.

11 11. Answering Paragraph 13, lines 2-3 on page 5, of Plaintiff's Amended complaint
12 under "Factual Background", Defendants deny each and every allegation contained therein.

13 **CAUSE OF ACTION**

14 **Negligence**

15 12. Answering Paragraph 1, lines 7-8 on page 5 of Plaintiff's amended complaint under
16 "Cause of Action, Negligence", Defendant admits that Plaintiff realleges each allegation set forth
17 in the preceding paragraphs.

18 13. Answering all remaining Paragraphs of Plaintiff's amended complaint under
19 "Cause of Action, Negligence", on pages 5-7, including sub-parts, Defendants deny each and
20 every allegation contained therein.

21 **JURY DEMAND**

22 14. Answering Paragraph 1 of Plaintiff's amended complaint under "Jury demand",
23 Defendant admits that plaintiff requests a jury trial.

24 **PRAYER FOR RELIEF**

25 11. Answering Paragraphs 1(a)-(c) on lines, 17-25 on page 7 and (d)(e), lines 1-2 on
26 page 8 of Plaintiff's Amended complaint, under "Prayer for Relief", Defendants deny each and

1 every allegation contained therein. Furthermore, Defendant denies that Plaintiff is entitled to any
2 relief against these defendants.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 Defendants assert that the Plaintiff's claims are governed by general maritime law and that
6 any recovery is limited by same.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Defendant asserts that the Plaintiff's negligence or decisions were the sole, proximate
9 cause of his alleged or injuries, if any, which the Defendant specifically denies

10 **THIRD AFFIRMATIVE DEFENSE**

11 Defendant asserts that the incident and injuries alleged by the Plaintiff, if any, were the
12 result of superseding, intervening, and/or unforeseeable causes from which the Defendant had no
13 duty to protect Plaintiff.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Defendants assert that the Plaintiff failed to act timely and reasonably and/or failed to
16 exercise due care in order to minimize or mitigate her damages.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 Defendants assert that the damages allegedly suffered by the Plaintiff were not the result
19 of any act or omission on the part of the Defendants, but were caused by Plaintiff's pre-existing
20 injuries and/or other trauma or illness suffered by the Plaintiff during her lifetime. To the extent
21 that the Defendants are liable for aggravating any pre-existing injury, illness or condition, which
22 the Defendants specifically deny, Plaintiff's damages should only be for an amount commensurate
23 with the degree that Plaintiff's pre-existing injury, illness or condition was aggravated by the
24 conduct or omission of the Defendants.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 Defendants assert that as a result of the conduct, acts or omissions of the Plaintiff, the

1 Plaintiff is estopped from claiming the damages alleged in the Complaint.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 Defendants assert that any injuries or damages suffered by Plaintiff, if any, were solely
4 caused by the actions and/or omissions of third parties for whom the Defendants have no
5 responsibility or liability

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 Defendants assert that Plaintiff's Complaint fails to state a claim upon which relief may be
8 granted.

9 **NINTH AFFIRMATIVE DEFENSE**

10 Defendants assert that the Plaintiff misstated facts and/or failed to disclose facts to the
11 shipboard physicians, and that such misstatement and/or failure exacerbated and/or caused any
12 such injuries to the extent that any award of damages to Plaintiff must be proportionately reduced
13 accordingly.

14 **TENTH AFFIRMATIVE DEFENSE**

15 Defendants assert that it has no legal responsibility for the damages or injuries alleged by
16 Plaintiff in the Complaint, if any; however, in the event that the Defendants are held liable, any
17 liability being specifically denied by the Defendants, said liability will be due in whole or in part
18 to the breach of warranty, acts, omissions, activities, failures, recklessness or negligence of others.
19 Accordingly, any recovery by the Plaintiff against the Defendants should be reduced in proportion
20 to the respective negligence, fault, or responsibility of all other parties, persons, or entities,
21 including their agents, servants, representatives, or employees who contributed to or caused any
22 injury or damages to Plaintiff, if any, in accordance with the law governing comparative fault.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 Defendants assert that its liability, if any, must be reduced by the comparative amount of
25 liability and/or fault attributable to the Plaintiff for the reasons set forth in the preceding and
26 subsequent affirmative defenses and by reason of the decisions made by Plaintiff.

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TWELFTH AFFIRMATIVE DEFENSE

Defendants assert that, to the extent applicable, any award of damages to Plaintiff, if any, should be reduced by any collateral source payments paid to and/or received by Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants assert that this action is governed by, and subject to, the terms, limitations, and conditions contained within the contract for passage and the Defendants adopt and incorporates same in its entirety into its answer by reference.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant asserts that it lacked notice of any dangerous condition and played no active role in the design or construction of the component which Plaintiff blames for the subject accident and that the vessel was instead designed and built by the Fincantieri shipyard in Italy.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants assert that the alleged dangerous condition, if any, was apparent, open and obvious to Plaintiff, and should have been observed by Plaintiff in the ordinary use of his senses.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiff had actual knowledge and/or notice of any alleged dangerous condition, if any, and realized and appreciated the potential for injury as a result of such alleged condition; and, having a reasonable opportunity to avoid it, consciously and voluntarily exposed herself to same.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants asserts that the Defendants did not have notice of the allegedly dangerous condition, if any, and therefore did not have a duty to warn Plaintiff as to the existence of same.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants assert that Plaintiff willingly, voluntarily, and knowingly assumed each and all risks and hazards involved in the activities alleged in the complaint.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 Defendants reserve its right to add additional affirmative defenses as discovery develops.

3
4 WHEREFORE, defendants pray judgment as follows:

- 5 1. That plaintiff take nothing by way of her complaint;
- 6 2. That the Court enter judgment for defendants;
- 7 3. For costs incurred in defense of this action; and
- 8 4. For such other and further relief as the Court may deem proper.
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11 DATED: November 13, 2017

MALTZMAN & PARTNERS

12
13 BY: s/ Jeffrey B. Maltzman

Jeffrey B. Maltzman, WSBA #52051 & CSBA #131758

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19 AMERICA LINE N.V., and HAL ANTILLEN N.V.